

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 98-807

October 27, 1998

PUBLIC UTILITIES COMMISSION
Inquiry Into Implementing the
Universal Service Provisions of
the Telecommunications Act of 1996

NOTICE OF
INQUIRY

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

In this Order, we initiate an Inquiry relating to the implementation of the universal service provisions of the Telecommunications Act of 1996 (TelAct), 47 U.S.C. § 254(B), and Maine's recently amended statute related to affordable telephone service, 35-A M.R.S.A. § 7104. This Order outlines our general plan for implementing a state universal service fund through several phases of rulemaking proceedings as well as the issues and policies that will be considered in each phase. **Comments on the issues raised in the Notice must be filed by November 30, 1998.**

II. PROCEDURAL BACKGROUND

On July 17, 1997, the Maine Public Utilities Commission (the Commission) initiated an Inquiry Into Implementation of the Universal Service Provisions of the Telecommunications Act of 1996, Docket No. 97-429. The Notice of Inquiry outlined a series of issues related to universal service and posed questions for comment by interested persons.¹ While the comments were generally helpful in defining some of the basic universal service issues, many comments were preliminary in nature and did not offer specific insights. Thus, for administrative convenience, the Commission has determined that it will begin a new inquiry related specifically to universal service rather than continue with Docket No. 97-429. The comments from Docket No. 97-429 will, however, be incorporated into the record of this proceeding.

III. STATUTORY REQUIREMENTS

The TelAct charges us with ensuring that: (1) affordable telephone service be available throughout Maine; (2) prices for

¹The Commission received comments from Bell Atlantic, AT&T, MCI, Sprint, State Planning Office, and the Telephone Association of Maine.

similar telecommunications services be reasonably comparable throughout all regions of the state; and (3) a pro-competitive environment exists in Maine. At the federal level, the Federal Communications Commission (FCC) continues to conduct numerous proceedings to implement the universal service provisions of the TelAct. Most notably, the FCC continues to work on developing a cost model which will be used to calculate the amount of support each state and/or carrier will receive from federal sources. Resolution of these federal matters will likely impact both state funding and policy issues.

In April 1998, Governor King signed into law An Act Regarding Telecommunications Regulation, P.L. 1997, ch. 692 (codified at 35-A M.R.S.A. § 7104) (Affordable Telecommunications Law). This law authorizes the Commission to establish a state universal service fund in order to ensure that "similar telecommunication services are available to consumers throughout all areas of the State at reasonably comparable rates." 35-A M.R.S.A. § 7104(2). While the law provides the Commission with the authority to establish a universal service fund to implement our mission of achieving universal service, it requires that we first assess the needs of the State's consumers and determine the level of support required to meet those needs before establishing the fund. *Id.*

Section 7104 also requires the Commission to maximize federal assistance available for universal service purposes. 35-A M.R.S.A. § 7104. To meet this requirement, the Commission must design a mechanism which will enable Maine to qualify for and accept federal funds. Finally, the law requires explicit identification on customer bills of contributions to any state universal service fund. 35-A M.R.S.A. § 7104(3)(E). In constructing our overall universal service program, we may also consider 35-A M.R.S.A. § 7104-A which permits the Commission to establish a telecommunications access fund to assist qualified schools and libraries in acquiring advanced telecommunications technologies.

IV. DESCRIPTION OF OVERALL PROCESS

We envision that this Inquiry will lead to at least four separate rulemakings (which are described as Phases herein). In this Inquiry we will begin to assess the needs of Maine's consumers by addressing broad policy issues and defining key terms such as: affordability, comparability, and subsidies. This Inquiry will also consider in broad terms which carriers should contribute to the fund, the basis for which carriers will

receive support, and whether the costs may be recovered through explicit end user charges. Any preliminary determinations coming out of this Inquiry will be incorporated into the rulemakings in Phases II, III, IV, and V.

Phases II, III and IV will contemplate the establishment of a three-part universal service fund. Phase II will establish the structure, funding mechanisms, and administration of a Telecommunications Access Fund (TAF) which will provide explicit funding for currently-mandated support programs such as Lifeline benefits, Link-Up benefits, Telecommunications Relay Services, the Telecommunications Relay Equipment Fund and other directly mandated costs imposed or enforced by the Commission.

Phase III will address the necessity, structure, funding mechanisms, and administration of any possible Education Access Fund (EAF) which could provide explicit support for telecommunications services to Maine's schools and libraries pursuant to 35-A M.R.S.A § 7104-A. We anticipate that the Commission will seek comment on and address at least the following issues:

- Whether ratepayers should fund educational institution access to telecommunications services
- The criteria to be used to assess the level of need for the EAF
- Whether the EAF assessment should be capped at a certain dollar level and if so, at what level
- Whether EAF support to schools and libraries should be based upon the average income per pupil or the property value per pupil of supported localities
- Whether the Commission should fund and administer the EAF in a manner similar to other segments of the universal service fund
- Whether the administrator of the EAF would be empowered to determine whether applications are justified or allowable or whether that task will be handled by another body

Phase IV will address the necessity, structure, funding mechanisms, and administration of any possible High Cost Fund

designed to ensure that end users' costs are both affordable and comparable to urban rates. We now intend to seek comment on the applicability of the following principles in designing a High Cost Fund:

- Requiring carriers requesting funds to demonstrate that, in the absence of high cost and support, their opportunity to earn a fair rate of return would be jeopardized
- Allotting funds based upon the lesser of the embedded or forward-looking cost of providing service to a service area
- Conditioning a carrier's receipt of high cost fund support on a determination that services and prices be comparable to statewide averaged levels

We also intend to seek comment on:

- How to administer support in areas where high and low cost regions are included in the same ETC service area
- How and whether considerations of revenue requirement should be incorporated into the design of a HCF
- Whether we should provide HCF support to customers or to companies providing service to customers

Phase V will provide for a final reconciliation of the various aspects of the total Universal Service Fund.

We have divided the universal service proceeding into separate rulemakings because we believe that each portion can, and should, be addressed on its individual merits. As we move through the process, however, we will be mindful of the need to incorporate each piece into an integrated mechanism. As noted below, the timetables for each of these portions vary significantly.

We intend to initiate and complete Phases I and II within months while Phases III, IV, and V will likely not be initiated until important policy questions are answered at both the federal level (including the amount of any federal universal service support, the mechanism which will be used to disperse any funds, the amount of federal schools and libraries funding) and state level (including the outcome of any access rate proceedings

concerning the independent telephone companies, any recommendations of the state School and Library Advisory Board, and possible new legislation).

While we do not find the concepts of universal service and fair competition incompatible, we will focus this docket on achieving sustainable universal service. Competitive issues should be considered by parties as they comment on this docket, however, addressing both competition and universal service in the same docket may confuse objectives and lead to a product that achieves neither objective. Thus, competitive issues will be addressed in other dockets. We also foresee a subsequent competition docket to correct any inequities resulting from our attempts to achieve universal service.

V. PHASE I -- POLICY ISSUES

A. AFFORDABLE

The TelAct requires that Maine have quality telecommunications services available at affordable rates. 47 U.S.C. §254(b). This requirement is reinforced by 35-A M.R.S.A. § 7104(3)(c), which requires that our rules be consistent with the goals outlined in the federal act.

In its May 8, 1997 Order on Universal Service, the FCC adopted the Federal-State Joint Board on Universal Service's definition of affordability. Report and Order, In the Matter of the Federal-State Joint Board on Universal Service, (FCC) May 8, 1997 at ¶ 110. Specifically, the FCC agreed that, "the definition of affordability contains both an absolute component, which takes into account an individual's means to subscribe to universal service, and a relative component, which takes into account whether consumers are spending a disproportionate amount of their income on telephone service." Id. We agree with the FCC that there are many factors which must be considered in determining whether a rate is affordable. Thus, the Commission will establish general guidelines, rather than adopt an absolute definition of affordable, and standards by which to measure both the absolute and relative components.

The current subscribership rate for basic service in Maine is 96.1% as measured by the Common Carrier Bureau's Division of Statistical Analysis.² This subscription rate

²The Federal Communications Commission report Telephone Subscribership in the United States (Data Through November 1997), compiled by Alexander Belinfante of the Industry Analysis

significantly exceeds the national average of 93.9%. Based upon this information, we believe that current basic rates are affordable for the majority of Maine citizens.

35-A M.R.S.A. 7104(4) requires the Commission to investigate whether rates are affordable if the subscribership level falls more than 2% below the national average.³ However, given the fact that current subscribership rates are more than 2% above the national average, the Commission believes that it should formally consider initiating an investigation into affordability if the subscribership level falls 2% below its present level.

In addition to an investigation based upon a drop in subscription rates, the Commission could investigate if other factors, such as local calling area size, income levels, cost of living, population density, or other socioeconomic indicators, indicate that rates are not affordable. For example, if it could be demonstrated that the penetration rate among our lowest income families was significantly below that enjoyed by high income households, the Commission could investigate whether additional low-income universal service support is needed or, perhaps, whether other programs, such as Lifeline, are both functioning and being administered properly. We could also investigate if certain subscribers were spending a significantly disproportionate share of their income on telephone expenses due to restricted local calling areas or other socioeconomic factors. Finally, any geographic rate deaveraging undertaken by the Commission may leave the state with an affordable average rate, but could create areas where geography, income and calling areas combine to create a situation where telephone service is not affordable for a significant number of citizens in that region.

Division, Common Carrier Bureau. This report indicates that Maine's telephone penetration rate grew from 94.4% in 1991 to 96.1% in 1997. Maine's penetration rate among low income consumers is outlined in the Federal Communications Commission report Telephone Penetration by Income by State (Data Through 1997), compiled by Belinfante. This report indicates that Maine's penetration rate for households earning less than \$10,000 increased from 86.9% in 1991 to 90.5% in 1997.

³The source of our subscription data will be the annual subscribership report produced by the Common Carrier Bureau's Division of Statistical Analysis.

(1) Please comment our proposed definition of affordability, specifically the percentage indicators we suggest as affordability barometers.

(2) Please comment on whether the Commission should establish specific "trigger events" which would require an investigation into affordability. Please include a description of any "trigger events" and the action which should be taken.

B. COMPARABLE

Section 254(b) of the TelAct provides that consumers in all regions of the Nation should have "access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas." 47 U.S.C. § 254(b). In Maine, the comparability requirement is defined in 35-A M.R.S.A. § 7104(2) as ensuring that "similar telecommunications services are available to consumers throughout all areas of the State at reasonably comparable rates." Thus, we must consider both comparability of services as well as comparability of rates.⁴

In general, we believe that similar or comparable service does not necessarily mean identical service. Instead, we believe that telecommunications services are similar and comparable if those services are capable of the same functions. Whether differences in speed, complexity, and quality rise to the level of making the service dissimilar or incomparable will likely be most relevant when examined in terms of the provision of advanced services to high cost areas. Again, a reasonably comparable rate does not necessarily mean an identical rate.

In addition to monitoring statewide comparability, the Commission will also monitor the overall price level for services in Maine to ensure that these services are priced at rates comparable to those available in other jurisdictions. We seek suggestions as to how we should measure this national comparability.

⁴We see this comparability requirement as largely the responsibility of the federal jurisdiction. Maine lacks a major market, such as a Boston, New York or even a Tucson or a Louisville, that could effectively bear a larger portion of common costs than other areas of the state.

(3) Please comment on our proposed definition of similar or comparable telecommunications services.

(4) Please comment on our proposed definition of reasonably comparable rates.

(5) What standard should be used to evaluate whether rates are comparable for similar services? Should we establish a percentage threshold?

C. SUBSIDY

For the purposes of our universal service fund, we propose to define subsidy as a regulatorily mandated and enforced difference between the forward-looking cost of a service and its price in cases where it is specifically ordered to be priced below cost.

(6) Please comment on our proposed definition of the term subsidy.

VIII. PHASES II, III, and IV

Phase II, III, IV, and V will each be the subject of its own Inquiry and Rulemaking proceedings which will establish the specific mechanisms necessary for each fund. At this time we will provide an overview of our initial assessment of certain global policy issues related to cost recovery and seek comment on those issues.

A. NEEDS ASSESSMENT

Maine's Affordable Telecommunications Law requires that we assess consumers' needs prior to adopting either the High Cost Fund or the Telecommunications Access Fund. By including a needs assessment in the Affordable Telecommunications Law, the Legislature made clear that it did not wish to enter into open-ended funding commitments. Accordingly, the Commission must ensure that any fund established pursuant to these laws adheres to this principle.

For purposes of the Telecommunication Access Fund, we have initiated a rulemaking on the Lifeline and Link-Up programs which will determine the scope of those programs by establishing eligibility standards and regulatory treatment of administrative costs. See *MPUC Rulemaking on Lifeline and Link-Up Programs*

(Chapter 294), Docket No. 98-724. One of the many factors we will consider in that case will be the need for those programs and the impact the costs of such a program have on other ratepayers.

Our assessment of need for the Education Access Fund and High Cost Fund will focus on whether any specific decision to expand support of certain services requires additional funding and/or whether abandonment of federal support of certain services creates an imbalance in the current revenue picture which requires additional funding. Any subsidies that we remove from rates must result in reduced retail rates. We will not permit any double recovery of subsidies which we make explicit, nor will we permit a mischaracterization of any charges levied as a result of our universal service program.

(7) Please comment on our needs assessment plans.

(8) Please comment on our intentions to make the shift from embedded to explicit subsidies transparent to ratepayers.

B. CONTRIBUTIONS TO THE FUND AND PAYMENTS FROM THE FUND

1. Who should contribute?

We believe that all retail customers of basic telecommunications service in Maine should be assessed a surcharge on either a percentage or flat per-line basis. We believe this is the most effective manner to both inform ratepayers of the cost of these programs and to ensure that carriers are not able to recover costs in excess of actual contributions. The Commission recognizes that charges assessed to carriers are typically passed on to end users, and there is no reason not to assess customers directly. Alternatively, we could assess carriers based upon gross revenues.

(9) Should we assess customers on a flat per line basis or on a percentage of their monthly bill? Should we instead assess carriers based upon gross revenues?

(10) Should we assess customers as a direct line item on telephone bills, or should we assess carriers and allow them to recover the assessments through their own line item assessments to customers?

(11) Could a similar collection mechanism be applied for all three branches of universal service support? Please explain your reasoning for each of the individual funds.

(12) How would we assess private lines, PBXs and Centrex lines if we choose a flat assessment per line?

(13) How would we assess non-POTS (plain old telephone service) technology, particularly if we decide to support advanced services in high cost areas?

(14) Should we assess wireless carriers?

2. On what should the contributions be based?

Section 254(g) of the TelAct provides state authority to assess contributions for a state universal service fund on "an equitable and nondiscriminatory basis." Any proposed manner of assessment must meet this standard. We propose that contributions be either flat or based upon a percentage of the intrastate bill. Alternatively, contributions could be based upon gross intrastate revenues of carriers.

(15) Please comment on methods of assessments.

3. How should the contributions be collected?

35-A M.R.S.A. § 7104(3) states that the Commission shall contract with an appropriate independent fiscal agent (IFA), that is not a state entity, to serve as administrator of the state universal service fund. We intend to select the IFA through a competitive bidding process. We are interested in comments regarding how much authority and/or discretion regarding payment criteria should be delegated to the IFA.

(16) How much authority and/or discretion should the IFA have to establish payment criteria? How detailed should our rule be regarding how contributions are collected?

4. How will payments be determined?

The dissemination of monies collected through any of the three funds contemplated by this Notice will be determined through the specific rulemaking associated with that fund. However, we now seek comments on several more global issues relating to payment dissemination.

(17) Should payments from the fund go directly to ETCs or to end users?

(18) Should payment be conditioned upon documentation of relevant costs?

(19) Should EAF payments be administered through a system similar to the federal e-rate program?

IX. REQUEST FOR COMMENTS AND PARTICIPATION

We advance the information in this Notice as an indication of the issues we intend to address in our multi-phase rulemaking on universal service issues. We invite interested persons to provide responses to the questions raised in the body of this Notice and participate in this general policy case. All comments should be filed on **November 30, 1998**. We also invite interested persons to identify other issues that should be included in this proceeding and to suggest possible solutions.

Dated at Augusta, Maine this 27th day of October, 1998.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: WELCH
NUGENT
DIAMOND